



## **COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED**

703-603-7740  
FAX 703-603-0655

Jefferson Plaza 2, Suite 10800  
1421 Jefferson Davis Highway  
Arlington, VA 22202-3259

Compliance Memorandum No. 5

Subject: JWOD Program Direct Labor Ratio Requirements

Effective Date: October 1, 2004

### **1. PURPOSE**

This memorandum prescribes the procedures to be followed by nonprofit agencies participating in the Javits-Wagner-O'Day (JWOD) Program when submitting direct labor data on JWOD project(s) or requesting a phase-in for a new or transferred project. It also prescribes the procedures to be followed when a nonprofit agency fails in any fiscal year to meet the requirements for the JWOD direct labor ratios of people who are blind, in the case of nonprofit agencies associated with National Industries for the Blind (NIB), and people who are blind and/or have other severe disabilities, in the case of nonprofit agencies associated with NISH. This memorandum supersedes Compliance Memorandum No. 5, dated May 30, 1995; and sections four and five of Operations Memorandum No. 10, dated August 30, 1991.

### **2. EFFECTIVE PERIOD OF MEMORANDUM**

The effective date of the attached interim guidance is October 1, 2004, and the expiration date of the interim guidance is the latest of the following dates:

- September 30, 2005; or
- the effective date of a final rule incorporating this guidance into the Committee's regulations at 41 CFR 51; or
- the date of publication in the *Federal Register* of a withdrawal of the proposed rule to incorporate this guidance into the Committee's regulations at 41 CFR 51.

### **3. DIRECT LABOR REQUIREMENT**

The definition of a qualified nonprofit agency under the JWOD Act requires the agency to employ people who are blind (in the case of NIB-associated nonprofit agencies serving such individuals) or people who are blind and/or have other severe disabilities (in the case of NISH-associated nonprofit agencies serving such individuals) for at least 75 percent of the direct labor hours performed in the nonprofit agency during any fiscal year (hereinafter 75 percent ratio).

- B. The Committee has established a policy that the percentage of direct labor hours performed by people who are blind or severely disabled on total JWOD project work should be at least 75 percent, and the percentage of direct labor hours performed by people who are blind or severely disabled on individual JWOD projects must be no lower than 60 percent.
- C. The Committee has established a policy that nonprofit agencies associated with NIB may count the labor performed by people with severe disabilities (including severe visual impairment), but who are not legally blind, toward the JWOD project direct labor ratio. However, the work done by these people cannot be counted toward the overall direct labor ratio requirement. Additionally, these people must meet the severely disabled and not competitively employable standard that is required of NISH-associated nonprofit agencies.

#### **4. TRACKING OF DIRECT LABOR ON INDIVIDUAL JWOD PROJECTS**

- A. The Committee does not require that all nonprofit agencies have the ability to track direct labor by project because it realizes that in some cases it may not be economically justifiable. However, the ability to calculate the actual cost of production requires that a nonprofit agency be able to determine how much direct labor is actually used, and if it does not know the actual labor costs, the nonprofit agency potentially could be producing the item at a loss. Consequently, the Committee recommends that nonprofit agencies lacking the capability to track direct labor by individual project investigate the requirements of revising their labor tracking system to provide that capability.
- B. Beginning in Fiscal Year 2005, the Committee will select individual projects during the addition process that, if added to the Procurement List, will require individual direct labor tracking. The nonprofit agencies performing these projects will have to report the direct labor hours performed by people who are blind or severely disabled, as well as the number of people who are blind or severely disabled employed on the project, for the first three years that the project is on the Procurement List.
- C. The Committee does require that all nonprofits be able to track and maintain direct labor hours on at least a product or service family basis.

## **5. NONPROFIT AGENCY RESPONSIBILITIES**

- A. Prior to verification to participate in the JWOD Program, nonprofit management must have attended a central nonprofit agency (CNA) training course on the JWOD Program.
- B. Once the Committee has added a nonprofit's first project to the Procurement List, personnel from the nonprofit who will be managing/supervising the project must attend training on the JWOD Program prior to the nonprofit beginning performance.
- C. An annual certification (Committee Form 403 or 404), which is required by the Committee's regulations at 41 CFR 51-4.3(a), is due to NIB or NISH by November 1st for the fiscal year ending the preceding September 30. If the total JWOD project direct labor is below 75 percent, the reasons causing the ratio to be below 75 percent must accompany the report.
- D. Nonprofit agencies must keep track of direct labor hours and sales on JWOD products and services. This recordkeeping can be done on each individual JWOD project or by product or service family.
- E. The nonprofit agency must track and report direct labor on each project phase-in to NIB or NISH on a quarterly basis, in accordance with the procedures outlined below in 6.E.
- F. If at any time after the phase-in period, particularly at the end of a fiscal year, a nonprofit agency is performing a JWOD project with a direct labor ratio below 60 percent, the nonprofit agency will notify either NIB or NISH.

## **6. CENTRAL NONPROFIT AGENCY REQUIREMENTS**

- A. NIB and NISH will provide training to nonprofit agencies interested in becoming authorized nonprofits so that the nonprofits are aware of all Program requirements prior to a nonprofit submitting its request for verification.
- B. During a nonprofit agency's first year in the JWOD Program, NIB or NISH will monitor and report the nonprofit's performance on a quarterly basis to the Committee.
- C. NIB or NISH will report on a quarterly basis the status of all projects that have a phase-in. This includes projects just added to the Procurement List and any projects that have been transferred to a different nonprofit agency where the new nonprofit requires a phase-in.

- D. During the initial phase (the first 90 days) of a new JWOD project, NIB or NISH will monitor the agency to determine whether the projected direct labor ratio is being attained.
- E. NIB and NISH will monitor the quarterly reports of their nonprofit agencies. Those nonprofits with JWOD ratios below 75 percent after the second quarter will be sent warning letters. The letters to the Board Chair and executive director/president will state the process that will be used if the nonprofit should finish the year below 75 percent.
- F. NIB and NISH will report to the Committee the status of nonprofit total JWOD direct labor ratios after the end of the second quarter.
- G. NIB and NISH are required to review and forward their nonprofits' annual certifications to the Committee by December 1. If the total JWOD project direct labor is below 75 percent, the reasons causing the ratio to be below 75 percent must accompany the report.
- H. NIB or NISH will notify the Committee when a nonprofit is performing a JWOD project with a direct labor ratio below 60 percent and the project is not on an approved phase-in.

## **7. PHASE-IN REQUIREMENTS**

At the time the CNA submits a request proposing the addition of a product or service to the Procurement List or the transfer of a product or service from one nonprofit to another, the request must include an estimate of the direct labor hours that will be performed by people who are blind or have severe disabilities (ADD-5 or ADD-6). If the nonprofit is unable to initially perform the project at the direct labor ratio stated on the form, a phase-in must also be requested.

- A. Normally, phase-ins will be reserved for unusual or highly complex projects that are large (more than 10 people) or where unique circumstances exist.
- B. When a phase-in is requested by the nonprofit agency, the following information must be included with the request:
  - 1. A detailed explanation of why the phase-in is required;
  - 2. The ratio at which the project will actually begin;
  - 3. The length of time that the phase-in will take;

4. Whether or not the phase-in will cause either the nonprofit's cumulative overall or total JWOD direct labor ratio to drop below 75 percent and, if so, when that ratio will again be at 75 percent.
- C. All phase-ins must be approved by the Committee prior to the nonprofit beginning work on the project. Any project that has a phase-in approved only after the nonprofit has already begun work on that project will not be exempted from meeting the required direct labor ratios.
- D. A phase-in plan must be submitted when one or more of the conditions below apply:
1. The nonprofit agency initially plans to employ less than 60 percent blind or other severely disabled direct labor, but expects to increase the percentage following the start-up phase.
  2. The nonprofit agency will require more than 18 months after it begins work on the project to reach the projected percent of blind or other severely disabled direct labor hours.
  3. The nonprofit agency's overall direct labor ratio will drop below 75 percent as a result of the phase-in.
- E. A phase-in plan must consist of a narrative describing how the nonprofit agency plans to replace non-blind or non-disabled persons in order to reach the projected employment of blind or other severely disabled persons shown on Form ADD-5 or ADD-6. The narrative must be submitted through the CNA and must include:
1. The source or sources of new referrals of blind or other severely disabled persons;
  2. The number of referrals expected each month until the phase-in is complete, accompanied by a letter from the source(s) indicating the projected availability of trainable blind or other severely disabled persons;
  3. The type and extent of the training required, including any on-the-job training;
  4. The number of hours expected to be worked by blind, other severely disabled, and non-disabled persons for each month during the phase-in period;
  5. Suitable tables showing the progress expected, taking into consideration those individuals who are blind or other severely disabled who will drop out of the training program or leave employment with the nonprofit agency for any reason; and

6. The signature of the nonprofit agency executive.

- F. A phase-in schedule must be submitted in all cases when a phase-in plan is not required but a nonprofit agency does not expect to begin providing a product or service using the projected percent of blind or other severely disabled direct labor hours. At a minimum, the schedule will include the direct labor ratio at which the project will be performed for each month of the phase-in.
- G. When a nonprofit agency is required to prepare a phase-in, it must:
1. Submit reports to the CNA on a quarterly basis after beginning work on the project. The report must reflect the nonprofit's progress in meeting the phase-in until the phase-in has been completed and the projected percent of direct labor has been achieved.
  2. Prepare and submit to the CNA a revised phase-in at any time progress is such that it appears that the nonprofit will not meet the projected percentage of direct labor by the date indicated on Form ADD-5 or ADD-6. The revised phase-in must include a detailed explanation of why the project could not be done as originally planned.
  3. Notify the CNA when the phase-in has been completed and the nonprofit has reached the projected percent of direct labor.
- H. When a phase-in is required, the CNA must:
1. Submit to the Committee a copy of the nonprofit agency's phase-in plan or schedule when it submits the form showing estimated direct labor hours (Form ADD-5 or ADD-6).
  2. Until the phase-in is completed and the projected percent has been reached, submit to the Committee the quarterly reports prepared by the nonprofit agency indicating its progress in meeting the phase-in plan.
  3. Submit a revised nonprofit agency phase-in plan to the Committee if the nonprofit agency is not able to meet its schedule. As part of the submission, NIB or NISH will verify the explanation provided by the nonprofit.
  4. Notify the Committee in writing when the phase-in has been completed and the projected percent of direct labor hours indicated on the Form ADD-5 or ADD-6 has been achieved.

## I. Failure to meet phase-in requirements

1. If, at the end of the quarter following the phase-in period, the ratio for projects being monitored is within five percentage points of the projected ratio and at least 60 percent, no further reporting or monitoring would be required.
2. If, at the end of the quarter following the phase-in period, the ratio for projects being monitored is more than five percentage points less than the projected ratio or below 60 percent, the CNA should advise the Committee staff in writing of the current and expected future status with a brief narrative discussion of the circumstances, the nonprofits revised ADD-5/6 or new phase-in request, and a recommendation.
3. Upon receipt of the information provided in accordance with I.2. above, the Committee staff will review the information submitted by the CNA and make a determination as to what actions are required.

## 8. CALCULATION OF DIRECT LABOR RATIOS

Direct labor ratio information must be reported to two decimal places. The Committee will use commonly understood rounding rules in determining compliance with direct labor ratios. A ratio at or above 74.51 percent will be counted as 75 percent.

## 9. FAILURE TO MEET DIRECT LABOR REQUIREMENTS

### A. Total JWOD Project Direct Labor Ratio

1. If a nonprofit's total JWOD project ratio is below 75 percent, the Committee will take into consideration extenuating circumstances such as:
  - a) Approved phase-in in effect,
  - b) Projects with fewer than five blind or severely disabled workers,
  - c) Projects under national emergency or wartime surge requirements,
  - d) Individual projects approved by the Committee at lower ratios, and
  - e) The effect of promoting people who are blind or severely disabled into supervision or management positions or into competitive placements.
2. If, after consideration of the extenuating circumstance(s), the Committee determines that a nonprofit's total JWOD project ratio is too low, the same procedures noted in 8A.1. and 8A.2. of Committee memorandum #4 - Nonprofit

Agency Organization-wide Direct Labor Ratio Requirements dated October 22, 2004, will be followed.

3. Until the beginning of Fiscal Year 2007, the Committee will only take action against those nonprofit agencies with total JWOD project ratios below 60 percent.

#### B. Individual JWOD Projects with Direct Labor Ratios below 60 percent

As stated earlier, the Committee's policy is that the direct labor ratio on individual JWOD projects must be at least 60 percent. Whenever the Committee learns that a project is being done at less than 60 percent and is not on an approved phase-in, the Committee will request NIB or NISH to investigate and report on the causes and actions that are being taken to correct the situation. If the report is not satisfactory to the Committee staff and the shortcomings cannot be corrected, the Committee will consider whether the JWOD project is not suitable for the Procurement List and should be removed or should be transferred to another nonprofit agency with the ability to maintain an appropriate ratio. This determination will be made on a case-by-case basis.

### **10. VERIFICATION OF DIRECT LABOR RATIOS**

At the time that a Committee, NIB or NISH compliance staff person makes an on-site visit to an individual nonprofit agency, that nonprofit agency must make available the cumulative direct labor hours being performed on all JWOD projects and, if available, the direct labor hours for each individual JWOD project.

Any nonprofit agency that is found with a cumulative direct labor ratio that is below 60 percent on all JWOD projects must provide through NIB or NISH its plan to increase the employment of persons who are blind and/or have severe disabilities to over 60 percent and must submit a timing schedule when appropriate. The Committee staff will review the data submitted and makes a determination as to whether action by the Committee is required. If such action is deemed necessary, the staff will arrange for appropriate presentations before the Committee.

### **11. REINSTATEMENT**

A. When the Committee has withdrawn a nonprofit agency's designation as a qualified nonprofit agency, the following conditions must be met before the nonprofit agency may be reinstated as a qualified nonprofit agency, in addition to the qualification requirements of 41 CFR 51-4.2:



1. The nonprofit agency must meet the 75 percent direct labor requirements for the year in which the authorization was withdrawn; or
2. The nonprofit agency must meet the 75 percent direct labor requirement for two consecutive quarters.

B. For the nonprofit agency to receive orders for the item it was previously authorized to provide, the following circumstances must apply:

1. No other nonprofit agency has assumed responsibility for providing the item under the JWOD Program; or
2. The nonprofit agency providing the item has no objection to permitting the affected nonprofit agency to reassume supply responsibility for the item.

Original Signed by Leon A. Wilson, Jr.

11-01-2004

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Leon A. Wilson, Jr.  
Executive Director

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Date